

**REMARKS**

In view of the following remarks, the Examiner is requested to withdraw the rejections and allow Claims 14-27, the only claims pending and currently under examination in this application.

**FORMAL MATTERS**

Claims 14-26 were examined and rejected.

Claim 14 has been amended to specify that the second layer is held in radial tension. Claim 16 has been amended to specify that the second and third layers are held in radial tension. Supported for these amendments may be found throughout the specification, for example, at p. 4, lines 21-22; and p. 5, line 8.

Claims 25 and 26 has been amended to correct a minor typographical error.

Claim 27 has been newly added and finds support at p. 5, lines 21-30 of the instant specification.

As the above amendments enter no new matter to the application, their entry by the Examiner is respectfully requested.

**REJECTION UNDER 35 U.S.C. § 102**

Claims 14 and 15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Maronian et al. (U.S. Patent No. 5,059,486).

According to MPEP § 2131, a claim is anticipated by a reference only if the *reference teaches each and every element of the claim.*

The present invention is drawn to a method of fabricating a septum. As amended, independent Claims 14 and 16 specify that the second layer (Claim 14) and the third layer (Claim 16) are held under radial tension. According to the instant specification, by "held" under radial tension is meant that the second and third layers are constantly tense and never relaxed.

In contrast, Maronian et al. discloses a multilayered rubber article. According to Maronian's disclosure, the base layer is initially stretched before applying an intimately adhered overlayer of elastomeric material. Once the overlayer has been

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cured, the rubber article returns to its relaxed state. As such, Maronian et al. fails to disclose a layer that is "held" under radial tension.

Therefore, Maronian et al. fails to anticipate the present claims because the reference does not teach each and every element of the present invention. Accordingly, this rejection may be withdrawn.

### **REJECTION UNDER 35 U.S.C. § 103**

In the Office Action, Claims 14-26 have been rejected under 35 U.S.C. § 103(a) as being obvious over the assertedly admitted prior art or McKinney (U.S. Patent No. 3,551,273) in view of Maronian et al. (U.S. Patent No. 5,059,486) and Jacobs (U.S. Patent No. 3,857,751).

With respect to rejections made under 35 U.S.C. § 103, MPEP § 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir.1991). [emphasis added]

McKinney and the assertedly admitted prior art disclose septums which have a central rubber layer and two exterior rubber layers which are bonded together. As set forth below, the McKinney reference and the assertedly admitted prior art fail to teach or suggest a septum having second and third layers which are constantly tense and never relaxed.

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In making the rejection, the Examiner alleges the following:

The references failed to teach that those skilled in the art would have bonded the layers together while the exterior layers were in tension in order to provide the core in compression. It should be noted that the admitted prior art as characterized on pages 1-2 of the specification appears to suggest that the core was held in compression in the finished assembly (Office Action, p. 3).

With respect to the assertedly admitted prior art, it appears that the Examiner is equating the septum in the instant specification which comprises a very soft elastomer sandwiched between two or more rigid elastomers.

However, this is not the equivalent of a septum that has second and third layers "held" under radial tension which are constantly tense and never relaxed. Further, nowhere does McKinney nor the assertedly admitted prior art teach or suggest such a septum.

In the Office Action, the Examiner relies on Maronian to provide the element of a septum having a layer under tension. However, as discussed above, Maronian discloses a base layer which is initially stretched and then relaxed. Therefore, Maronian fails to make up for the deficiency of the assertedly admitted prior art or McKinney.

The Examiner further cites Jacobs alleging that "one of skill in the art would have incorporated a tension layer with a core layer there between wherein the tension layers were put in tension during the bonding operation" (Office Action, p. 4).

However, Jacobs discloses a process very similar to Maronian. Jacobs describes a composite sheet formed from three layers of elastomeric sheet material bonded together with intervening layers of a woven, mesh-like material held in a resiliently pre-stressed tensile condition. In contrast to the present method, Jacobs layer is pre-stressed prior to bonding but recovers from the "stressed condition after the bonding process has been completed" (col. 2, lines 30-33). As such, Jacobs fails to teach a layer that is "held" under radial tension as in the present invention.

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Because the cited combination of references fails to teach or suggest a septum having second and third layers which are constantly tense and never relaxed, it is respectfully submitted that Claims 14-26 are not obvious under 35 U.S.C. § 103(a) over McKinney (U.S. Patent No. 3,551,273) in view of Maronian et al. (U.S. Patent No. 5,059,486) and Jacobs (U.S. Patent No. 3,857,751).

**Rejection under 35 U.S.C. § 112, Second Paragraph**

Claims 26 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

In view of the above amendment, this rejection may be withdrawn.

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### CONCLUSION

In view of the remarks above, the Applicant respectfully submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Gordon Stewart at 650-485-2386.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-1078.

Respectfully submitted,

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